

### **REMARKS**

Entry of the foregoing amendments and reconsideration of this application are respectfully requested in view of the following remarks. Claims 1, 3-14, 16-18, 20-22, and 27-38 are pending in the application, with claims 1, 12, 27-28, 32 and 36 being the independent claims. The Applicants respectfully submit that these amendments introduce no new matter. Based on the above Amendments and the following Remarks, the Applicants respectfully request that the Examiner enter these amendments, and then reconsider and withdraw all outstanding rejections.

#### ***Information Disclosure Statement***

The Examiner did not consider references 77, 80, 86, 139 and 154 from the information disclosure statement filed on April 6, 2006 because they do not contain publication dates. The Applicants note that reference 77 cites to a publication dated 1995. The Applicants also note that reference 154 cites to a publication dated 2001. Finally, the Applicants note that references 86 and 139 include dates on which such documents were retrieved from the internet. The Applicants respectfully request that the Examiner consider all of the references as prior art for the purposes of this application. The Applicants, however, reserve the right to assert that such references are not prior art with respect to this application in this, or any future, proceeding.

#### ***The Claims As Amended Are Directed To Patentable Subject Matter***

Claims 28-35 were rejected under 35 U.S.C. § 101, because the claims did not recite either a physical transformation of matter or a practical application. As amended, independent claims 28 and 32 now state that the test spectrum (or test sample) “is accepted for analysis if the displacement of the at least one test centroid from the at least one centroid” associated with a preferred diluent (or a preferred diluent concentration and composition) is within an acceptable distance. Respectfully, the rejection to claims 28-35 appropriately may be withdrawn in light of this recitation of a practical application.

***The Claims As Amended Do Not Introduce New Matter***

Claims 1, 3-14, 16-18, 20-22 and 27-38 were rejected as new matter under 35 U.S.C. § 112, first paragraph, for various reasons. Claims 1, 12, 27-28, 32 and 36 were specifically discussed in the Office Action.

The objectionable phrase “the control model including at least one control centroid located in n-dimensional space defined by n mass spectral features included in the control model” was noted with regard to Claims 1 and 12. These two claims also were noted as lacking support for “an acceptable distance from the control centroid.” Respectfully, the amended claims as proposed by this Paper recite “at least one centroid in the control model” (or similar phrases) rather than a “control centroid.” Claims 1 and 12 also were said to lack support for the phrase “submitting the test spectrum to the biological diagnostic.” The latter “submitting...” phrase has been canceled from the claims.

Claim 27 was also noted as lacking support for a “control centroid” in association with a diluent. Similarly, claims 28 and 32 were said to lack support for a “control centroid” in association with a preferred diluent. In addition, claim 36 was rejected as lacking support for a “control centroid” defined by n mass spectral features. As noted above, the claims no longer recite the phrase “control centroid.”

Respectfully, the rejection for new matter appropriately may be withdrawn in light of the amendments to the claims.

The Applicants note that the term “certifying” is used in several locations in the specification as filed. For example, the term “certifying” is used in paragraphs [0028], [0032], [0035], and [0037] and it is used in Figure 3 of the specification as filed.

***The Claims As Amended Are Definite***

Claims 1, 3-14, 16-18, 20-22, 27 and 36-38 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for several reasons. With respect to claims 1, 12 and 36, they were said to be unclear as to whether it is the space that is defined by n mass spectral features or if it is the control centroid that is defined by those mass spectral features. The Office Action also found

it unclear whether the space was included in the control model or if the control centroid was included in the control model. Claim 1 was said to be unclear whether “mapping the test spectrum obtained from said performing to the n-dimensional space” referred to the control model or the control centroid. And claim 27 was said to be unclear whether the “test diluent of the using step is the same or different from the diluent of the ‘providing step’ and how these two steps relate to tone another to map a test spectrum.”

As noted above, the claims have been amended to refer to “at least one centroid in the control model” (or similar phrases) rather than to a “control centroid.” A person skilled in the art will appreciate that the centroid generated from a test or sample is defined by the “n” mass spectral features that are mapped into an n-dimensional space. In other words the dimensions of the space are n in number but the location of a centroid is determined by the magnitudes of the features. And claim 27 has been amended to clarify that the diluent of the “using” step is different than the diluent of the “providing” step.

Accordingly, the Applicants respectfully submit that the currently amended independent claims and those claims that depend from them are allowable.

CONCLUSIONS

All of the stated grounds of rejection have been properly traversed or rendered moot. The Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. Applicants believe that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that further personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.


Prompt and favorable consideration of this Amendment is respectfully requested.

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